

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SAXON INNOVATIONS, LLC,

Plaintiff,

v.

NOKIA CORP., *et al.*,

Defendants.

CIVIL ACTION NO. 6:07-cv-490-LED-JDL

JURY TRIAL DEMANDED

**AGREED MOTION TO EXTEND DEADLINES TO SUBMIT
EXPERT REPORTS**

Plaintiff Saxon Innovations, LLC (“Saxon”) and Defendants Nintendo of America, Inc. and Nintendo Co. Ltd. (collectively “Nintendo”) move for an adjustment to various procedural deadlines relating to expert reports in the above-captioned case.¹ In support, the parties submit the following:

1. Pursuant to the Court’s Docket Control Order [DE 117-2], Saxon’s expert reports on damages and infringement are due thirty-five (35) days after the Court issues its claim construction ruling and Nintendo’s rebuttal expert reports on damages and infringement are due sixty (60) days after the Court issues its claim construction ruling. Also pursuant to the Court’s Docket Control Order, Nintendo’s invalidity expert report is due thirty-five (35) days after the Court issues its claim construction ruling.

2. The Court’s claim construction order was entered on July 31, 2009 [DE 311]. Accordingly, Saxon’s expert reports on damages and liability are currently due September 4,

¹ This Agreed Motion does not apply to the deadlines for the remaining defendants in the case who have negotiated a separate agreement with Saxon. *See* DE 347.

2009, and Nintendo's rebuttal expert reports on damages and liability are currently due September 29, 2009. Nintendo's invalidity expert report is also due September 4, 2009.

3. Saxon contends that discovery relating to Saxon's damages and infringement case and related expert reports, however, is not yet complete.

4. First, Saxon contends that there remain documents and information relevant to Saxon's damages case that Nintendo has yet to produce.

5. While the parties dispute whether Nintendo's production of damages documents is deficient, the parties have agreed to the following adjustments to the procedural schedule:

a. To the extent it has not already done so, Nintendo will substantially complete its production of documents and information relevant to damages between September 4 and September 11, 2009.² This supplemental production will include but not be limited to documents and information relating to the Nintendo DSi. As further discussed and agreed by the parties, Nintendo will also supplement its responses to Saxon's written deposition questions to include the requested royalty information from Nintendo Co., Ltd. by no later than September 11, 2009.

b. Saxon reserves all rights to object to the status of Nintendo's production following Nintendo's supplemental production to the extent Saxon believes deficiencies exist or remain, and reserves all rights to file the appropriate motion(s) to compel.

c. Nintendo reserves all rights to oppose any such motion(s) to compel.

² This provision does not apply to discovery that has an initial response date after September 11, 2009 (i.e., recently served discovery). However Nintendo has agreed to provide its response to Saxon's Interrogatory No. 15 at least two days before Saxon's damages expert report is due and as early as next week if possible. This provision also does not expressly include depositions. However, the parties agree that discovery is not set to close until October 27, 2009 and that Saxon reserves its right to request additional depositions should Saxon believe that the production of additional information by Nintendo necessitates additional depositions. Nintendo reserves its rights to oppose the taking of such depositions.

d. Saxon will serve its damages expert report twenty-one (21) days after Nintendo completes its production (i.e. between September 25 and October 2, 2009).

e. Assuming Saxon serves its damages report between September 25 and October 2, 2009, Nintendo will serve its rebuttal damages expert reports on October 27, 2009 or the date on which the last Defendant serves its rebuttal damages expert report, whichever is later.

f. Given that discovery is currently scheduled to close on October 27, 2009, the parties further agree that expert depositions relating to Saxon's and Nintendo's respective damages expert reports may be taken after the discovery cut-off on mutually agreeable dates prior to November 15, 2009.

g. Saxon and Nintendo further agree to make their damages experts available for deposition on mutually agreeable dates prior to November 15, 2009.

6. On August 24, 2009, Saxon also provided Nintendo with proposed Second Amended Infringement Contentions.

7. While the parties dispute whether the proposed amendments are proper, the parties have agreed to the following additional adjustments to the procedural schedule:

a. Nintendo will not oppose Saxon's request to amend its contentions as set forth in the August 24, 2009 amended infringement contentions if:

i. Saxon will drop the new allegations raised in Saxon's August 24, 2009 amended contentions with respect to Claim 7 of U.S. Patent No.

5,502,689;

ii. Saxon will serve its infringement expert report on September 4, 2009;

iii. Saxon agrees that Nintendo has until October 13, 2009 to serve its rebuttal non-infringement expert report; and

iv. Saxon will not oppose any amendments by Nintendo of Nintendo's invalidity contentions, with such amended invalidity contentions to take the form of Nintendo's invalidity expert report that will be served on September 4, 2009.

b. By September 11, 2009 Saxon will indicate whether it will agree to the conditions set forth in Sections 7.a, (i)-(iv) above. If Saxon does not agree to all of these conditions, then Nintendo does not agree to Saxon's request to amend its contentions as set forth in Saxon's August 24, 2009 amended infringement contentions, and the parties will engage in further good-faith negotiations.

c. To the extent there are differences between the new Nintendo DSi product and previously accused Nintendo products relevant to Saxon's infringement case, Nintendo will produce documents sufficient to show such differences by September 11, 2009.

d. Saxon reserves all rights to object to the status of Nintendo's production following Nintendo's production relating to the DSi to the extent Saxon believes deficiencies exist, and reserves all rights to file the appropriate motion(s) to compel.

e. Nintendo reserves all rights to oppose any such motion(s) to compel.

f. If Saxon believes these new documents require an amended infringement expert report, Saxon will serve an amended report limited to new features in the DSi and only with respect to the '555 patent, by September 21, 2009.³

g. If Saxon does submit such an amended report by September 21, 2009, Nintendo would have until October 20, 2009 to submit its rebuttal non-infringement expert report on all issues and patents.

h. Saxon further reserves the right to seek deposition testimony from Nintendo relating to its infringement case against the DSi prior to serving any amended infringement expert report relating to the DSi. Nintendo reserves its rights to oppose the taking of such depositions.

WHEREFORE, PREMISES CONSIDERED, Saxon and Nintendo request that the motion be granted.

³ Saxon reserves the right to serve additional amended infringement contentions and amended expert infringement reports as relate to U.S. Patent No. 5,502,689 based on Nintendo's supplemental production relating to the DSi. Nintendo reserves the right to oppose any such amended infringement contentions and amended expert infringement reports.

DATED: September 4, 2009

Respectfully submitted,

/s/ T. John Ward, Jr.

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**COUNSEL FOR SAXON INNOVATIONS,
LLC**

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 4th day of September, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first-class mail on this same date.

/s/ T. John Ward, Jr.

T. John Ward, Jr.